Pro Works Contracting, Inc. *and* Iron Workers Local 229, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL–CIO. Cases 21–CA–120477 and 21–CA–121946

January 27, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges and amended charges filed by Iron Workers Local 229, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL–CIO, the Union, the General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing on August 6, 2014, against Pro Works Contracting, Inc., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On September 22, 2014, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on October 1, 2014, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Union filed a joinder supporting the General Counsel's motion and requesting additional remedies. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was received by August 20, 2014, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter and email dated August 28, 2014, advised the Respondent that unless an answer was received by September 4, 2014, a motion for default judgment would be filed.

On August 28, 2014, the Respondent requested an extension of time to file an answer. The Region granted an extension to September 10, 2014. By letter and email dated September 12, 2014, the Region advised the Respondent that unless an answer was received by September 19, 2014, the Region would seek default judgment. Nonetheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the consolidated complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with an office and place of business located at 10612 Prospect Avenue, Suite 105, Santee, California, has been engaged in the business of general contracting and steel reinforcement subcontracting in the building and construction industry.

During the 12-month period ending June 30, 2014, a representative period, the Respondent, in conducting its business operations described above, provided services valued in excess of $50,000 to Lusardi Construction Company (Lusardi), an enterprise within the State of California.

At all material times, Lusardi, a California corporation with an office and a place of business located at 1570 Linda Vista Drive, San Marcos, California, has been engaged in the business of general contracting in the building and construction industry.

During the 12-month period ending June 30, 2014, a representative period, Lusardi, in conducting its operations described above, purchased and received at its San Marcos, California facility goods valued in excess of $50,000 directly from points outside the State of California.

During the 12-month period ending December 31, 2013, a representative period, the Respondent, in conducting its business operations described above, provided services valued in excess of $50,000 to T.B. Penick & Sons, Inc. (T.B. Penick), an enterprise within the State of California.

At all material times, T.B. Penick, a California corporation with an office and a place of business located at 15435 Innovation Drive, Suite 100, San Diego, California, has been engaged in the business of general contracting in the building and construction industry.

During the 12-month period ending December 31, 2013, a representative period, T.B. Penick, in conducting its operations described above, purchased and received at

its San Diego, California facility goods valued in excess of $50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Earl Register	President
David Anson	Vice President
Mark Russell	Superintendent/ Representative
Tom Coker	Superintendent/Representative
Al Sawyer	Superintendent/Foreman
Brandon Sawyer	Foreman

The Respondent has engaged in the following conduct:

About December, 23, 2013, the Respondent terminated its employee Michael Choma.

About January 24, 2014, the Respondent terminated its employee Robert Whitman.

About January 27, 2014, the Respondent terminated its employee Ismael Covarrubias.

The Respondent engaged in the conduct described above because the named employees of the Respondent joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

About December 23, 2013, the Respondent, by Al Sawyer, at the Respondent's 22nd/Commercial jobsite, implicitly threatened its employees with unspecified reprisals because they engaged in union and concerted activities.

About December 23, 2013, the Respondent, by Earl Register, at Respondent's 22nd/Commercial jobsite, implicitly threatened employees with job loss and unspecified reprisals if they engaged in union and concerted activities.

About December 27, 2013, the Respondent, by Al Sawyer, during a telephone call, attributed an employee's termination to that employee's union and concerted activities.

About January 22, 2014, the Respondent, by Brandon Sawyer, at the Respondent's 22nd/Commercial jobsite, threatened its employees with job loss if they engaged in union and concerted activities.

About January 23, 2014, the Respondent, by Al Sawyer and Brandon Sawyer, at the Respondent's 22nd/Commercial jobsite, threatened its employees with job loss if they engaged in union and concerted activities.

About January 24, 2014, the Respondent, by Brandon Sawyer, at Respondent's 22nd/Commercial jobsite, implicitly threatened its employees with job loss if they engaged in union and concerted activities.

About January 27, 2014, the Respondent, by Al Sawyer and Brandon Sawyer, interrogated its employees about the extent of their union activities.

CONCLUSIONS OF LAW

1. By the conduct described in paragraphs 1 through 4 above, the Respondent has been discriminating in regard to the hire or tenure, or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

2. By the conduct described in paragraphs 5 through 11, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Michael Choma, Robert Whitman, and Ismael Covarrubias, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

Backpay shall be computed in accordance with *F.W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). Additionally, we shall order the Respondent to compensate Choma, Whitman, and Covarrubias for any adverse tax consequences of receiving lump-sum

backpay awards and to file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Further, the Respondent shall be required to remove from its files any and all references to the unlawful discharges of Choma, Whitman, and Covarrubias, and to notify them in writing that this has been done and that the discharges will not be used against them in any way.[1]

ORDER

The National Labor Relations Board orders that the Respondent, Pro Works Contracting, Inc., Santee, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they join or assist the Union and engage in protected concerted activities or to discourage employees from engaging in these activities.

(b) Explicitly or implicitly threatening employees with unspecified reprisals or job loss because they engage in union or protected concerted activities.

(c) Telling employees that they have been discharged for engaging in union or protected concerted activities.

(d) Interrogating employees about the extent of their union activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Michael Choma, Robert Whitman, and Ismael Covarrubias full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Michael Choma, Robert Whitman, and Ismael Covarrubias whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Compensate Michael Choma, Robert Whitman, and Ismael Covarrubias for any adverse tax consequences of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

(d) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharges of Choma, Whitman, and Covarrubias, and within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Santee, California, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceed-

[1] In its joinder to the General Counsel's Motion for Default Judgment, the Union requests that the Board order the Respondent to post the appropriate Board notice for the time period between the filing of the unfair labor practice charges and the date the notices are actually posted; mail the notices to the last known address of all employees employed by the employer from December 23, 2013, until the notices are posted or mailed; and mail the Board's Decision and Order along with the notice to all of the Respondent's employees. We deny this request because the Union has not shown that these additional measures are needed to remedy the effects of the Respondent's unfair labor practices. See generally *Alstyle Apparel*, 351 NLRB 1287, 1288 (2007). However, we find that the General Counsel's request that the notice be mailed to the three unlawfully discharged employees is warranted here given the nature of construction-industry employment, where jobs are of limited duration, and employees frequently work for various employers.

In the absence of opposition, Member Miscimarra similarly approves the General Counsel's requested remedy that the Respondent mail the notice to discriminatees Choma, Whitman, and Covarrubias at their last known addresses. However, he notes that the General Counsel has not articulated a justification for this nonstandard remedy, and he does not here pass on the appropriateness of such a remedy in other future cases.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 23, 2013.

(g) Within 14 days after service from the Region, mail the attached notice, marked "Appendix," to Michael Choma, Robert Whitman, and Ismael Covarrubias at their last known addresses.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 27, 2015

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Mark Gaston Pearce, Chairman

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Philip A. Miscimarra, Member

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Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against you because you join or assist the Union and engage in protected concerted activities or to discourage employees from engaging in these activities.

WE WILL NOT explicitly or implicitly threaten you with unspecified reprisals or job loss because you engage in union or protected concerted activities.

WE WILL NOT tell you that you were discharged because of your union or protected concerted activities.

WE WILL NOT interrogate you about the extent of your union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Michael Choma, Robert Whitman, and Ismael Covarrubias reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Michael Choma, Robert Whitman, and Ismael Covarrubias whole for any loss of earnings and other benefits suffered as a result of their discharges, less any net interim earnings, plus interest.

WE WILL compensate Michael Choma, Robert Whitman, and Ismael Covarrubias for any adverse tax consequences of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Michael Choma, Robert Whitman, and Ismael Covarrubias, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

PRO WORKS CONTRACTING, INC.

The Board's decision can be found at www.nlrb.gov/case/21-CA-120477 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th St., N.W., Washington, D.C. 20570, or by calling (202) 273-1940.